

Reasonable Suspicion that the Holding in *United States v. Lewis* Was Incorrect

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In late January 2021, the United States Court of Appeals for the Sixth Circuit decided [*United States v. Lewis*](#) in which they affirmed the district court's denial of a motion to suppress evidence.¹ The court found that the stop and search was proper under Fourth Amendment case law, and more specifically, justified as a [*Terry*](#) stop.² But given the facts of the case, the reasonable suspicion requirement needed for such stops is unmet, as the dissent correctly points out.³

Defendant Devin Devon-Moore Lewis walked through an alley in Kalamazoo, Michigan with an acquaintance.⁴ A police officer, Nick Oliver, stopped him.⁵ Officer Oliver knew the acquaintance from prior interactions, so he focused on her initially, but quickly became suspicious of Lewis.⁶ Following this suspicion, he called for backup. Once backup arrived, Officer Oliver and another officer “physically restrained and searched Lewis.”⁷ Upon searching him, they found drugs, drug paraphernalia, and a firearm.⁸ As a result, he was charged with possession of a firearm as a felon, possession of a firearm in furtherance of drug trafficking, and possession of methamphetamine with intent to distribute.⁹

Mr. Lewis filed a motion to suppress on Fourth Amendment grounds, arguing that the officer violated his rights against unreasonable search and seizure.¹⁰ The district court denied the motion, Lewis pled guilty, and was sentenced to 135 months imprisonment.¹¹ Lewis appealed the case to the Sixth Circuit to challenge the denial of the motion to suppress.¹² The decision to affirm was based on the belief that Officer Oliver had “reasonable suspicion to

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¹ *United States v. Lewis*, No. 19-2389, 1, 13 (6th Cir. Jan. 26, 2021) [<https://perma.cc/DM6A-R98K>].

² *Id.* at 12; *Terry v. Ohio*, 392 U.S. 1 (1968) [<https://perma.cc/8LAZ-GGAL>].

³ *Lewis*, No. 19-2389, at 18 (Clay, J., dissenting).

⁴ *Lewis*, No. 19-2389, at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Lewis*, No. 19-2389, at 1.

¹¹ *Id.* at 2.

¹² *Id.*

conduct a *Terry* stop and search Lewis for weapons by the time that Lewis was seized.”¹³

A *Terry* stop is justified if, at the time of seizure, the officer has reasonable suspicion to believe a person is armed and dangerous and is engaging in criminal activity.¹⁴ To satisfy this reasonable suspicion requirement, Officer Oliver claimed that he knew that the public alley that Lewis and his acquaintance were walking through was “commonly used to evade police detection and trespass on neighboring properties.”¹⁵ Once Oliver approached the two individuals, he quickly recognized the acquaintance, Amber French, who he knew to have sold drugs and stolen items from houses and trashcans in the past.¹⁶ Lewis had his hand in his pocket and Officer Oliver claimed he did not know if Lewis was armed.¹⁷ In response to this, he asked Lewis to remove his hand from his pocket. As he did this, Lewis “patted his waistband, which Oliver took as an indication that Lewis might be carrying a weapon.”¹⁸ Oliver also noticed that Lewis brushed something small and white behind his ear to the ground.¹⁹ Additionally, Oliver noted that Lewis was standing in a stance known as “bladed” which is common for people who are carrying guns.²⁰ On top of this, he noticed an “abnormally large bulge” around his hip, which Officer Oliver believed to be a firearm.²¹ It was at this point that Oliver radioed in for backup.²² As the backup patrol car was approaching, Officer Oliver asked Lewis if he had any weapons on him and if he could search him—Lewis answered in the negative to both questions.²³ The backup car, driven by Officer Day, then pulled up, blocking “what had been an unobstructed path down the other end of the alley.”²⁴ Asked again if he was armed, Lewis put his hands up.²⁵ He even complied when asked to take off his backpack.²⁶ The two officers then proceeded to each grab Lewis’s wrists, in which Lewis responded by trying to break free of the officers’ hold and according to Oliver, attempted to punch him.²⁷ Once this happened, they pinned Lewis to a fence, waited for more officers to arrive, handcuffed him, and searched him.²⁸ It was at this point that they discovered the illegal items.

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 2.

¹⁶ *Lewis*, No. 19-2389, at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.*

²² *Lewis*, No. 19-2389, at 3.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Lewis*, No. 19-2389, at 4.

Did Officer Oliver seize Lewis? Oliver drove into the alley, directed his headlights and flashlight towards Lewis and his acquaintance, and parked his car parallel to the alleyway only several feet away from Lewis.²⁹ Oliver drove a marked police cruiser and wore a police uniform with an undrawn pistol.³⁰ The district court determined that Lewis was considered “seized” when Officer Day arrived and partially blocked the exit of the alley, and again when Officer Oliver stepped closer to Lewis while using a commanding tone.³¹ Lewis was clearly seized, but the court found this justifiable on the merit that Officer Oliver had established reasonable suspicion that Lewis was engaging or had recently engaged in criminal activity.³² This was all based on the fact that “Lewis was in a high-crime area in an alley where people regularly trespassed, was with a known drug user and petty thief, and had exhibited behaviors characteristic of someone discarding contraband and of someone carrying a weapon.”³³ The district court found that this gave Oliver reasonable suspicion that Lewis had a firearm on him which therefore justified the frisk of Lewis.³⁴

Was this a correct ruling based on Fourth Amendment law? The [Fourth Amendment](#) protects “The right of the people to be secure in their persons . . . and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause”³⁵ As this case points out, in certain circumstances, officers can stop and interrogate suspects even when there is no probable cause without violating the Fourth Amendment.³⁶ This requires reasonable suspicion of criminal activity before an officer is able to [stop, seize, and frisk someone](#).³⁷ But this doesn’t work retroactively—they can’t stop and interrogate without reasonable suspicion or probable cause in hopes they will then gain reasonable suspicion during the encounter.³⁸

In *United States v. Mendenhall*, a person is considered seized by police when “by means of physical force or a show of authority, his freedom of movement is restrained” such that “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was

²⁹ *Id.* at 2.

³⁰ *Id.*

³¹ *Id.* at 5.

³² *Id.*

³³ *Id.*

³⁴ *Lewis*, No. 19-2389, at 5.

³⁵ U.S. CONST. amend. IV.

³⁶ *Lewis*, No. 19-2389, at 18 (Clay, J., dissenting).

³⁷ Elliot Mincberg, *Trump Judge Casts Deciding Vote to Authorize Police to Stop and Question Black Man Without Reasonable Suspicion: Confirmed Judges, Confirmed Fears*, PEOPLE FOR THE AMERICAN WAY, Feb. 8, 2021, <https://www.pfaw.org/blog-posts/trump-judge-casts-deciding-vote-to-authorize-police-to-stop-and-question-black-man-without-reasonable-suspicion-confirmed-judges-confirmed-fears/> [<https://perma.cc/62WK-9LE6>].

³⁸ *Lewis*, No. 19-2389, at 18 (Clay, J., dissenting).

not free to leave.”³⁹ The *Lewis* dissent points out that the real moment of seizure was when Officer Oliver pulled up right in front of Lewis and specifically asked Lewis to take his hands out of his pocket, which he complied with.⁴⁰ Given the circumstances of a police car pulling up right in front of someone, beaming their headlights on them, and a uniformed and armed officer asking to speak with them, a reasonable person in that same situation would clearly not think they were free to walk away.⁴¹ A reasonable person in the same situation would have felt like they also needed to comply with the officer’s requests to speak and take their hands out of their pocket.⁴² Lewis clearly yielded to authority.⁴³ Although the police car did not *completely* block the exit, this did not signal Lewis could leave.⁴⁴ It was still somewhat obstructing the exit, it was strategically pulled up right next to Lewis, and its headlights were directed toward him.⁴⁵ The majority thinks that seizure happened later when Officer Oliver ran the warrant check on his name.⁴⁶ But this was after all the preceding events that would make a reasonable person think they were seized.

At the time that the dissent correctly points to as time of seizure, what reasonable suspicion did the officer really have? They claim that because these two people were in an area known as a “high crime area,” that it gives police the right to stop them. But there had not been any trespass or any criminal activity reported at the time.⁴⁷ *Wardlow* tells us that a person’s “presence in a ‘high crime area,’ standing alone, is not enough to support a reasonable, particularized suspicion of criminal activity.”⁴⁸ Simply stating that this happened in a “high crime area” is not enough for reasonable suspicion—more is needed. *Terry* tells us that a limited frisk may be conducted if the officer has reasonable suspicion to believe that the suspect is armed and dangerous.⁴⁹ To have this suspicion, more than a “mere hunch” is required—but they can “make inferences from the information available to them that ‘might well elude an untrained person.’”⁵⁰ All Officer Oliver observed at the time of seizure was that there were two people walking in an alley way late at night.⁵¹ That’s it. There had been no incident reported that could potentially been tied to them.

³⁹ *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980) [<https://perma.cc/2ATD-44MA>].

⁴⁰ *Lewis*, No. 19-2389, at 19 (Clay, J., dissenting).

⁴¹ *Id.* at 19–20.

⁴² *Id.* at 21.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Lewis*, No. 19-2389, at 14 (Nalbandian, J., concurring).

⁴⁷ Minberg, *supra* note 37.

⁴⁸ *Illinois v. Wardlow*, 528 U.S. 119, 119 (2000) [<https://perma.cc/C5ZL-DKD7>].

⁴⁹ *Terry*, 392 U.S. at 27.

⁵⁰ *United States v. McCauley*, 548 F.3d 440, 444–45 (6th Cir. 2008) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)) [<https://perma.cc/LZ5W-KDCS>].

⁵¹ *Lewis*, No. 19-2389, at 24 (Clay, J., dissenting).

This case is troubling in its finding of what constituted reasonable suspicion. It essentially is giving police carte blanche discretion to stop people based on where they are walking. This case is difficult to look at, because here the police did end up finding weapons and drugs on Lewis, but it cannot be overlooked that the stop was nonetheless a violation. Given the context of this case and its outcome, it “raises special concerns of racial, ethnic, and socioeconomic profiling.”⁵² There was no basis to finding criminal activity other than the literal placement of pavement that Lewis and French were standing on. Location of one’s feet on pavement should not give the police a right to invade your privacy and violate your constitutional rights.

⁵² *Id.*